

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
-vs-) Case No. CR-05-036-F
)
)
JON KENT RED ELK,)
)
Defendant.)

ORDER

Before the court is the defendant's Second Motion to Compel Production (doc. no. 180).

In aid of the court's consideration of the motion, the government is directed to produce to the court, in chambers (via the Courtroom Deputy assigned to the undersigned judge), for *in camera* review, all documents or recordings responsive to the following descriptions:

1. Presentence investigation reports (including addenda) relating to Daun Blakes or James Hamilton.
2. Documents or recordings reflecting statements, or the substance of statements, made by Daun Blakes or James Hamilton to the United States or to any state or local law enforcement agency in debriefings associated with any federal criminal proceedings against either of them, or otherwise in compliance with plea agreements any cases in which either of said individuals is or has been a defendant.

3. Documents prepared by the office of the United States Attorney for this district, or submitted to that office, in connection with any proposal for or consideration of the filing a motion under USSG § 5K1.1 for the benefit of Daun Blakes or James Hamilton or in connection with any proposal for or consideration of the filing of a motion under Rule 35(b), Fed. R. Crim. P., in connection with any federal criminal proceedings against either of them.

The documents shall be produced to the court for *in camera* review not later than September 12, 2005.

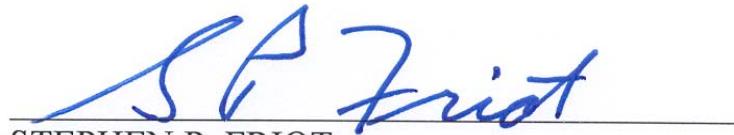
A hearing on the agency status (*e.g.*, Massiah v. United States, 377 U.S. 201 (1964) and its progeny) of Messrs. Blakes and Hamilton will be held on September 22, 2005, at 10:00 a.m. Defendant's post-hearing brief on the Massiah issues will be due not later than September 28. The government's response thereto shall be due not later than October 4, 2005.

Not later than September 12, 2005, the government will file herein a certification as to whether it has produced to counsel for defendant copies of documents in its possession reflecting the information described under the heading "Conclusion" on page 11 of doc. no. 180 (with respect to Messrs. Hamilton and Blakes). To the extent that such documents have been produced, the certification shall generically describe the documents and specify their bates numbers. To the extent that the certification required by this paragraph indicates that responsive documents have not been produced or that the government objects to production, the certification shall state the reason for non-production or the basis for the objection. Any such matters will be taken up by the court at the September 22 hearing.

To the extent that this order requires the government to produce documents with respect to Messrs. Blakes and Hamilton, the court has proceeded in part on the basis

of its rejection of the contentions set forth in the government's response to the motion to compel production (doc. no. 153) as to Mr. Laster. Due to the shortness of time remaining between this date and the date of trial, this order is entered without the benefit of the government's response to defendant's second motion to compel (doc. no. 180). This order is subject to modification if new and persuasive arguments are made in the government's response to that motion.

DATED August 19, 2005.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

05-0036p052 (pub).wpd